

**John Day City Council
October 22, 2013
7:00 PM
Council Chambers
AGENDA**

1. OPEN AND NOTE ATTENDANCE
2. APPROVAL OF CITY COUNCIL MINUTES OF OCTOBER 8, 2013
3. APPEARANCE OF INTERESTED CITIZENS – At this time Mayor Lundbom will welcome the general public and ask if there is anything they would like to add to tonight's agenda.

ACTION ITEMS:

4. Discuss for Signature Intergovernmental Agreement for Right of Way Services Agreement No. 29647; US26 Main St. and Canyon Blvd. Sidewalks (Key#17884)
Attachment:
 - Intergovernmental Agreement for Right of Way Services Agreement; US26 Main St. and Canyon Blvd. Sidewalks (Key#17884)
 - Electronic message from former DOJ attorney Dale Horman
5. Discuss for Adoption Resolution No. 13-711-15, Resolution Exercising the Power of Eminent Domain Exhibit D Right of Way Services
Attachment:
 - Resolution No. 13-711-15
6. Update from Public Works Director David Holland; NW 3rd Street Bridge Structural Deficiency
7. Review and Accept bid for the removal of Dangerous Building located at 405 SE Hillcrest, John Day

OTHER BUSINESS:

8. OTHER BUSINESS AND UPCOMING MEETINGS
Attachment:
 - RMI grant application

ADJOURN

TO: John Day City Council

FROM: Peggy Gray, City Manager

DATE: October 18, 2013

SUBJECT: Discuss for Signature Intergovernmental Agreement for Right of Way Services Agreement No. 29647; US26 Main St. and Canyon Blvd. Sidewalks (Key#17884)

Attachment:

- Intergovernmental Agreement for Right of Way Services Agreement; US26 Main St. and Canyon Blvd. Sidewalks (Key#17884)
- Electronic message from former DOJ attorney Dale Horman

BACKGROUND:

The City has requested the Department of Justice (DOJ) to perform right of way services on behalf of the City of John Day for our Main Street and Canyon Blvd. project. This agreement defines the roles and responsibilities of the City and the State regarding the real property to be used as part of right of way for road, street or construction of this public improvement project.

The City requested more information on why ODOT, in its Right of Way Services Agreement, requires a resolution of condemnation prior to initiation of acquisitions. I've attached an electronic message from Dale K. Hormann, previous DOJ attorney representing ODOT addressing the same questions for a Jefferson County project for your information.

To make a long story short, when using federal funds on a project, the assumption is that if the local agency does not have the property necessary for the project, that it will do what is necessary to acquire such property, including exercise the power of eminent domain. If ODOT is aware that a local agency is unable or unwilling to exercise its power of eminent domain to acquire such property, then ODOT would not be able to commit those federal funds for that project.

The Right of Way Services Agreement formalizes the assumption ODOT made concerning the agency's willingness to use eminent domain when it agreed to use federal funds on the project. The resolution prior to negotiation is further verification that the assumption was valid; as well as providing clear notice to the property owner as to what action the agency will take if negotiations aren't successfully concluded. It is not a threat, but an assurance that the property owner has certain rights and protections under such circumstances under the law.

ORS 35.235 clearly states the need of a resolution prior to negotiations with the property owner concerning acquisition and prices as follows:

35.235 Agreement for compensation; status of resolution or ordinance of public condemner; status of action of private condemner; agreement effort not prerequisite. (1) Subject to ORS 758.015 and 836.050, whenever in the judgment of the condemner it is necessary to acquire property for a purpose for which the condemner is authorized by law to acquire property, the condemner shall, after first declaring by resolution or ordinance such necessity and the purpose for which it is required, attempt to agree with the owner with respect to the compensation to be paid therefore, and the damages, if any, for the taking thereof. * * *

The Terms of Agreement; Section 1 states if the State performs right of way services on behalf of the Agency (City), under no conditions shall Agency's obligations for said services exceed a maximum of \$99,900.00, including all expenses, except settlements and litigation costs, unless agreed upon by both Parties. The \$99,900.00 is included in the budget paid by the TE grant. If the services exceed the \$99,900, the City has the option to stop the project at that time.

RECOMMENDATION:

The Right of Way Services Agreement and the Resolution are required by ORS 35.235 before the Right of Way Section will receive the authority to proceed. The Resolution with the legal descriptions is the next action item for the Council's review and hopefully adoption. Without the ROW Agreement the project will not proceed.

City Attorney Jeremy Green has reviewed the Agreement and approved as to legal sufficiency. I recommend the John Day City Council allow Mayor Lundbom to sign ODOT Agreement No. 29647, Intergovernmental Agreement for Right of Way Services US26 Main St. and Canyon Blvd. Sidewalks (Key #17884).

TO: John Day City Council

FROM: Peggy Gray, City Manager

DATE: October 18, 2013

SUBJECT: Discuss for Adoption Resolution No. 13-711-15, Resolution Exercising the Power of Eminent Domain Exhibit D Right of Way Services
Attachment:
• Resolution No. 13-711-15

BACKGROUND:

The City of John Day may exercise the power of eminent domain pursuant to statutes conferring authority and the Law of the State of Oregon. The City has a project that is federally funded known as US26 Main St. and Canyon Blvd. Sidewalks.

To accomplish the project; it is necessary to acquire the interests in the property described in "Exhibit A," attached to Resolution No. 13-711-15.

RECOMMENDATION:

The John Day City Council adopts Resolution No. 13-711-15.

TO: John Day City Council
FROM: Peggy Gray, City Manager
DATE: October 18, 2013
SUBJECT: Update from Public Works Director David Holland; NW 3rd Street Bridge Structural Deficiency

BACKGROUND:

Public Works Director David Holland has been gathering information from ODOT and engineers regarding the structural deficiency of the NW 3rd Street Bridge. He would like to update the City Council regarding his findings to date at this council meeting.

TO: John Day City Council

FROM: Peggy Gray, City Manager

DATE: October 18, 2013

SUBJECT: Review and Accept bid for the removal of Dangerous Building located at 405 SE Hillcrest, John Day

BACKGROUND:

The solicitation of proposals for the removal of the dangerous building at 405 SE Hillcrest Road were sent out on Wednesday, September 25, 2013 with the deadline for proposals on Friday, October 18, 2013 at 3 p.m. The City has not received any bids for this solicitation at the time of this council agenda.

I will present all bids received at the City Council meeting for your review.

TO: John Day City Council
FROM: Peggy Gray, City Manager
DATE: October 18, 2013
SUBJECT: Other Business and Upcoming Meetings
Attachment:
• RMI grant application

OTHER BUSINESS:

1. Attached is a copy of the Risk Management Incentive Program grant application. I was misinformed about the amount of funds the City was eligible to apply for. We were informed by CIS that we could apply for \$10,000; however, when I sent in my application I was informed that we were only eligible for \$5,702.66.
2. Mayor Lundbom will update the City Council regarding the recent Community Potluck for the firefighters.

UPCOMING MEETINGS AND EVENTS:

November 12, 2013	7:00 p.m. Council Chambers	Regular City Council meeting
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